

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Marpin Telecoms and Broadcasting Company)	
Limited,)	
)	
Complainant,)	
)	
v.)	EB-01-MD-015
)	
Cable & Wireless, Inc., Cable & Wireless USA,)	
Inc., and Cable & Wireless, plc,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2002

Released: April 19, 2002

By the Commission:

I. INTRODUCTION

1. In this Order, we deny a complaint that Marpin Telecoms and Broadcasting Company Limited ("Marpin") filed against Cable & Wireless, Inc. ("CWI"), Cable & Wireless, USA, Inc. ("CW USA"), and Cable & Wireless, plc ("CW plc") pursuant to section 208 of the Communications Act of 1934, as amended ("Act").¹ Specifically, we reject Marpin's claim that the defendants' failure to restrain the allegedly anticompetitive activities of their affiliate/subsidiary operating in the Commonwealth of Dominica, West Indies ("Dominica") violates section 214 of the Act, and the Commission order under which CWI and its successor, CW USA, received authorization to operate in the United States pursuant to section 214.²

¹ 47 U.S.C. § 208. Formal Complaint, File No. EB-01-MD-015 (filed Aug. 9, 2001) ("Complaint"). Although the Complaint states that Marpin initiated this action pursuant to section 206 (47 U.S.C. § 206), rather than section 208, of the Act, Complaint at 1, we have treated this as an action pursuant to section 208 from the outset, and will continue to do so in this order. See Notice of Formal Complaint, File No. EB-01-MD-015 (dated Aug. 15, 2001).

² 47 U.S.C. § 214; *Cable & Wireless, Inc.*, Order, Authorization and Certificate, 13 FCC Rcd 17933 (Int. Bur. 1998) ("*1998 Section 214 Order*"). Marpin's claim that defendants violated the terms and conditions of the *1998 Section 214 Order* is the only violation of section 214 that Marpin alleges in this cases. Accordingly, we treat Marpin's claim that defendants violated section 214, and Marpin's claim that defendants violated the *1998 Section 214 Order*, as the same claim.

II. BACKGROUND

A. The Section 214 Process

2. Section 214 of the Act requires carriers to secure certification from the Commission before constructing or operating interstate or international communications lines.³ Section 214 provides, in pertinent part, that:

[n]o carrier shall . . . acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the . . . operation[] of such additional or extended line⁴

The Commission may attach to the issuance of the certificate terms and conditions that it deems necessary to promote the public interest.⁵ This case involves defendants' alleged violation of a condition in the *1998 Section 214 Order*.

B. The Parties

3. Marpin provides telecommunications, Internet, and cable television services in Dominica,⁶ and operates pursuant to licenses granted by the government of Dominica.⁷ Marpin is organized under the laws of Dominica, and its offices are located in Dominica.⁸ Marpin does not claim to provide any telecommunications services in the United States.⁹

4. CW USA is a telecommunications carrier, incorporated in the United States, that is authorized pursuant to section 214 of the Act to provide facilities-based switched and private line international telecommunications and international resale service between the United States and various foreign points, including Dominica.¹⁰ CW USA formerly operated under the name CWI, and the entity previously known as CWI ceased to exist as a separate entity prior to the filing of this action.¹¹

5. CW USA is an indirect, wholly-owned subsidiary of CW plc, which is a corporation

³ See, e.g., *Atlantic Tele-Network, Inc. v. FCC*, 59 F.3d 1384, 1386 (D.C. Cir.1995).

⁴ 47 U.S.C. § 214(a).

⁵ 47 U.S.C. § 214(c).

⁶ Complaint at 2, ¶ 2; C&W USA's Verified Answer to Marpin's Verified Complaint, File No. EB-01-MD-015 (filed Aug. 29, 2001) ("Answer") at 12, ¶ 2.

⁷ Revised Joint Statement of Stipulated Facts, Disputed Facts and Key Legal Issues, File No. EB-01-MD-015 (filed Oct. 29, 2001) ("Joint Statement") at 9, ¶¶ 30-32.

⁸ Joint Statement at 9, ¶ 29; Complaint at 2, ¶ 1; Answer at 12, ¶¶ 1, 2.

⁹ See generally, Complaint at 2, ¶¶ 1, 2.

¹⁰ Complaint at 3, ¶ 4; Answer at 13, ¶ 4.

¹¹ Joint Statement at 6, ¶¶ 15-18; Opening Brief, File No. EB-01-MD-015 (filed Dec. 10, 2001) ("Marpin Brief") at 3. CW USA currently holds all licenses and authorizations previously held by CWI. Answer at 13, ¶ 4. See Marpin Brief at 3. Accordingly, we refer to CWI and its successor CW USA collectively as "CW USA" in discussing Marpin's allegations in this case. We refer to "CWI" individually, only when quoting or paraphrasing orders, pleadings, or briefs that refer to CWI individually.

organized under the laws of England and Wales.¹² CW plc does not operate any communications facilities in the United States, and does not hold any authorization to offer service in the United States pursuant to section 214 of the Act.¹³

6. CW USA and CW plc are affiliates of a company known as Cable & Wireless Dominica Limited (“CW Dominica”), which is not a party to this action.¹⁴ CW Dominica is the dominant telecommunications carrier in Dominica.¹⁵ CW plc indirectly owns 80 percent of CW Dominica, and the Government of Dominica owns the remaining 20 percent.¹⁶ CW USA is a horizontal affiliate of CW Dominica.¹⁷

7. The *1998 Section 214 Order* granted CWI (before it operated under the name CW USA) authorization under section 214 to offer facilities-based switched and private line service and non-interconnected resold private line services between the United States and Dominica.¹⁸ The *1998 Section 214 Order* also granted CWI authority to provide service between the United States and a number of international locations in addition to Dominica, including Jamaica, and St. Kitts and Nevis.¹⁹ The International Bureau specifically conditioned such authority on CWI and its affiliates in Jamaica, and St. Kitts and Nevis “not engaging in anticompetitive actions that will give the applicants an unfair advantage in the U.S. international services market.”²⁰ On January 10, 2002, after Marpin initiated this action, the Commission’s International Bureau released a subsequent order granting CW USA authority under section 214 to provide facilities-based and resale telecommunications service between the United States and all international points except China, Jamaica, Maldives, Russia, St. Kitts and Nevis, Seychelles, Vanuatu and Yemen.²¹

C. The Instant Proceeding

8. Marpin claims that defendants’ failure to restrain the allegedly anticompetitive activities of non-party CW Dominica in Dominica constitutes a violation of the terms and conditions of CW USA’s section 214 authorization.²² In particular, Marpin maintains that defendants have unlawfully failed to prevent CW Dominica from “endeavor[ing] to retain its monopoly status in Dominica in defiance of local

¹² Complaint at 2, ¶ 3; Answer at 12, ¶ 3; Joint Statement at 3, ¶ 2. CW USA is an “indirect” wholly-owned subsidiary because it is wholly-owned by another company that is ultimately wholly-owned by CW plc through a chain of subsidiary corporations. Joint Statement at 3, ¶ 4.

¹³ Answer at 13, ¶ 4; Marpin Brief at 4.

¹⁴ Joint Statement at 3, ¶¶ 3-4.

¹⁵ Complaint at 5, ¶ 10. *See 1998 Section 214 Order*, 13 FCC Rcd at 17933-34, ¶¶ 1, 23-24 and *International Authorizations Granted*, Public Notice, DA No. 02-46, 2002 WL 24115 (Int. Bur.) (rel. Jan. 10, 2002) (“*2002 Section 214 Public Notice*”)(grant of consolidated limited global section 214 authority), *recon. pending*, which classify CW USA as a dominant carrier on the route between the United States and Dominica.

¹⁶ Joint Statement at 3, ¶ 4.

¹⁷ Joint Statement at 3, ¶ 3. CW USA is a “horizontal” affiliate of CW Dominica because both companies are indirect, commonly-controlled subsidiaries of CW plc. *Id.* at ¶¶ 1, 3, 4.

¹⁸ *1998 Section 214 Order*, 13 FCC Rcd at 17933, ¶ 1.

¹⁹ *1998 Section 214 Order*, 13 FCC Rcd at 17933, ¶ 1.

²⁰ *1998 Section 214 Order*, 13 FCC Rcd at 17937-38, ¶ 19.

²¹ *2002 Section 214 Public Notice*, 2002 WL 24115.

²² Complaint at ¶ 7, 13; at 8, ¶ 15; at 23-24, ¶ 56; at 24-25, ¶ 58; *See Reply*, File No. EB-01-MD-015 (filed Sept. 4, 2001) (“*Reply*”) at ¶ 23 (noting that “the entire focus of Marpin’s Complaint is the violation of U.S. Defendants’ Section 214 authorizations by all three Defendants”).

law by refusing to interconnect its facilities with Marpin, challenging Marpin's operating authority, and terminating Marpin's access to international and local service without cause."²³ Marpin alleges that this anticompetitive conduct by non-party CW Dominica in Dominica has impeded Marpin's efforts to offer competing telecommunications service in Dominica.²⁴ Marpin also asserts that these anticompetitive actions have adversely affected domestic communications within Dominica, and international communications between Dominica and the United States.²⁵ Marpin asks the Commission to enter orders declaring the defendants to be in violation of section 214; revoking CW USA's section 214 authority to provide service between Dominica and the United States; imposing monetary forfeitures on CW USA; and awarding monetary damages to Marpin in excess of \$3.2 million.²⁶

9. CW USA answered the Complaint, denying the violations alleged by Marpin and advancing various affirmative defenses. No answer was filed on behalf of CWI or CW plc. CW USA's answer stated that CWI has operated as CW USA during all relevant times, and that CW plc is not a common carrier subject to the complaint procedures of sections 206 and 208 of the Act.²⁷ CW plc did, however, jointly file with CW USA a motion to dismiss the complaint challenging the Commission's personal jurisdiction over CW plc and its subject matter jurisdiction over this action.²⁸

III. DISCUSSION

A. Marpin Cannot Establish That CW USA Violated Section 214.

10. Marpin alleges no affirmative anticompetitive conduct by CW USA. Rather, Marpin contends only that CW USA's failure to restrain CW Dominica's alleged misconduct in Dominica violates two provisions of the *1998 Section 214 Order*. Specifically, Marpin argues that CW USA has violated paragraph 19 of the order, which, according to Marpin, contains a prohibition of any anticompetitive conduct by CWI (CW USA's predecessor) and any of its foreign affiliates that adversely

²³ Complaint at 7, ¶ 13. More specifically, Marpin alleges that CW Dominica has: (1) terminated a toll free number service that Marpin used to provide Internet access locally, Complaint at 8-10, ¶¶ 16-22 (Count 1); Marpin Brief at 14-15; (2) refused to interconnect CW Dominica's local customers and Marpin's international service, or to terminate international long distance traffic on Marpin's facilities, and attempted to disrupt Marpin's international service arrangement with MCI WorldCom, Complaint at 10, ¶ 23 (Count 2); Marpin Brief at 15; (3) turned off local exchange connections that CW Dominica previously had provided to Marpin for the provisioning of local service, Complaint at 11-16, ¶¶ 24-34 (Count 3); Marpin Brief at 15; (4) refused to interconnect the Marpin and CW Dominica networks, or to provide connectivity to an eastern Caribbean regional fiber network that would allow connections to MCI WorldCom's exchange facilities in the United States, and has entered into an agreement with the Government of Dominica and other Caribbean nations that bars Marpin from delivering international traffic to or from CW Dominica customers for a prescribed period of time, Complaint at 16-21, ¶¶ 35-50 (Count 4); Marpin Brief at 15; and (5) refused to allocate to Marpin new central office codes required for the provisioning of telecommunications service, Complaint at 21-22, ¶¶ 51-53 (Count 5); Marpin Brief at 15-16.

²⁴ Complaint at 22-23, ¶ 54.

²⁵ Complaint at 7, ¶ 14; at 10, ¶ 21; Marpin Brief at 16; Letter from Eric Fishman, counsel for Marpin, to Lisa J. Saks, Attorney, Market Dispute Resolution Division, Enforcement Bureau, File No. EB-01-MD-015 (filed Jan. 18, 2002) (clarifying argument made on page 16 of Marpin Brief).

²⁶ Complaint at 26-27, ¶¶ 62, 63. Marpin requested, pursuant to section 1.722(c)(2) of the formal complaint rules, that the Commission determine damages in a separate proceeding following its determination of liability and prospective relief. 47 C.F.R. § 1.722(c)(2); Complaint at 27, ¶ 63 (mistakenly identifying the applicable rule as "§ 1.722(b)(2)").

²⁷ Answer at 1, n.1. See *id.* at 6-7, ¶¶ 1-5.

²⁸ Joint Motion to Dismiss of Cable & Wireless USA, Inc. and Cable & Wireless, plc, File No. EB-01-MD-015 (filed Sept. 6, 2001) ("Joint Motion to Dismiss").

affects U.S. carriers and their customers.²⁹ In addition, Marpin maintains that CW USA has violated the order's prohibition against accepting "special concessions" in violation of section 63.14 of our rules.³⁰

11. The International Bureau included paragraph 19 in that *Order* in response to a petition by Sprint Communications Company, L.P. ("Sprint") that opposed granting CWI authority to provide service on the U.S.-Jamaica and U.S.-St. Kitts and Nevis routes. Specifically, Sprint argued that past anticompetitive behavior by CWI's monopoly affiliates Cable & Wireless Jamaica, Ltd. ("CWJ") and St. Kitts and Nevis Telecommunications, Ltd. ("SKANTEL") rendered it highly likely that they, together with CWI, would engage in future conduct posing a "very high risk" to competition.³¹ In response to these complaints, the Bureau imposed the following condition on CWI's authorization to provide service in the United States:

In light of the continuing unresolved disputes between Sprint and CWJ, and the apparent delay in SKANTEL's initiation of return traffic to Sprint, we condition grant of this authority expressly on *the applicants, SKANTEL and CWJ* not engaging in anticompetitive actions that will give the applicants an unfair advantage in the U.S. international services market. If we find evidence of such anticompetitive conduct, we reserve the right to impose substantial forfeitures or suspend or terminate this authorization for failure to meet the conditions of the grant.³²

12. According to Marpin, the above language "expressly placed CWI on notice that anticompetitive conduct by its foreign affiliates outside the United States which adversely affects the U.S. international service market could result in substantial forfeitures and termination of its license."³³ CW USA disputes that the condition stated in paragraph 19 applies to the conduct of CWI and *any* foreign affiliate. Rather, CW USA contends that the condition applies exclusively to the conduct of CW USA and its foreign affiliates in Jamaica and St. Kitts and Nevis.³⁴

13. We agree with CW USA. We conclude that paragraph 19, when read in the context of the entire order, compels the conclusion that the paragraph's conditions apply only to CWI (and successor CW USA) and to the two foreign affiliates named in that paragraph (SKANTEL and CWJ) with respect to their activities in Jamaica and St. Kitts and Nevis – not to *all* foreign affiliates or *all* foreign countries as Marpin contends. As the order makes clear, paragraph 19 directly addressed allegations by Sprint regarding the conduct of CWJ and Skantel. Notably, Sprint did not seek to deny CWI authority to operate on routes between the United States and all foreign countries in which a CWI affiliate was the dominant carrier. Sprint's petition pertained exclusively to the U.S.-Jamaica and U.S.-St. Kitts and Nevis routes and specifically alleged that the conduct of CWI's affiliates in those countries harmed Sprint.³⁵ Instead of denying CWI authorization on those routes, as Sprint had urged, the *1998 Section 214 Order* conditioned the grant of section 214 authority. Moreover, we note that the International Bureau specifically rejected AT&T's request that the Bureau impose special conditions on CWI's provision of service to *all* of the

²⁹ Complaint at 24-25, ¶ 58; Reply at ¶ 28; Marpin Brief at ii, 17.

³⁰ 47 C.F.R. § 63.14. Marpin Brief at 18.

³¹ *1998 Section 214 Order*, 13 FCC Rcd at 17937-38, ¶ 10.

³² *1998 Section 214 Order*, 13 FCC Rcd at 17941-42, ¶ 19 (footnotes omitted) (emphasis added).

³³ Marpin Brief at 17 (citing *1998 Section 214 Order*, 13 FCC Rcd at 179341-42, ¶ 19); see Reply at ¶ 28.

³⁴ CW USA Brief at 10 (quoting *1998 Section 214 Order*, 13 FCC Rcd at 17947, ¶ 38 (emphasis added by CW USA)).

³⁵ *1998 Section 214 Order*, 13 FCC Rcd at 17935, ¶ 5.

affiliated routes addressed in the *1998 Section 214 Order*.³⁶ Thus, we read the *1998 Section 214 Order* as imposing obligations only on CWI (and its successor CW USA), CWJ, and Skantel, and only with respect to Jamaica and St. Kitts and Nevis. Thus, because behavior with respect to Dominica is at issue here, we deny the complaint. Even assuming the condition covers Skantel, CWJ, and CWI outside of Jamaica and St. Kitts and Nevis, Marpin does not allege that Skantel or CWJ have engaged in any anticompetitive actions. As to CW USA (formerly CWI), Marpin alleges no affirmative anticompetitive conduct, but merely a failure to prevent CW Dominica's allegedly anticompetitive conduct. Nothing in the record suggests that CW USA participated in the conduct of CW Dominica. We will not find on this record that the alleged lack of action by CW USA constitutes "engaging in anticompetitive actions" in violation of the *1998 Section 214 Order*. We therefore find that CW USA has not violated the *1998 Section 214 Order*.

14. We reject Marpin's assertion that the construction of paragraph 19 that we apply here gives CW USA's foreign affiliates "free reign to engage in market abuses adversely affecting U.S. carriers and their customers."³⁷ Our rules provide safeguards against market abuses on U.S. international routes that exist separate and apart from any special conditions of CW USA's existing section 214 authorization.³⁸ In addition, we note that CW USA is classified as a dominant carrier with respect to a number of international routes, including the U.S.-Dominica route.³⁹ Therefore, it also is subject on these routes to the structural safeguards and reporting requirements applicable to dominant carriers.⁴⁰ Marpin does not allege that CW USA has violated any of these regulatory safeguards, with the exception of section 63.14 of our rules⁴¹ and, as discussed below, Marpin has failed to offer any proof in support of its section 63.14 claim. Nor has Marpin presented any facts that lead us to conclude that these safeguards, together with the specific conditions on CW USA's section 214 authorization, are insufficient to protect against harm to competition on U.S. international routes resulting from potential market abuses by CW USA's foreign affiliates.

15. Marpin also alleges that CW USA violated the *1998 Section 214 Order* by accepting a special concession in contravention of 47 C.F.R. § 63.14. This claim, too, must fail. As Marpin correctly notes,⁴² the *1998 Section 214 Order* expressly prohibited CWI from accepting "special concessions," as defined in 47 C.F.R. § 63.14 (b), from its affiliated foreign carriers in any market, including Dominica,

³⁶ See 13 FCC Rcd at 17938, ¶ 12. AT&T had argued that such conditions were warranted because the Commission's dominant carrier rules and safeguards were "not sufficient to reduce the risk that CWI will distort competition on the routes it seeks to serve." *Id.* The International Bureau, however, concluded that there was "no basis" to impose the conditions that AT&T requested, finding that the Commission's regulatory safeguards and enforcement authority would be sufficient to detect and deter anticompetitive conduct by CWI and its foreign affiliates. *1998 Section 214 Order*, 13 FCC Rcd at 17941, ¶ 18. We note also that in the *2002 Section 214 Public Notice*, the International Bureau granted CW USA authority to provide service between the United States and all international points, with the exception of five specific locations that include Jamaica and St. Kitts and Nevis. The Bureau's decision to treat CW USA's service to Dominica under a grant of global operating authority, while continuing to subject CW USA to the terms and conditions of the *1998 Section 214 Order* with respect to service to Jamaica and St. Kitts and Nevis, demonstrates that the Bureau continued to find unnecessary special conditions related to other affiliated routes, including Dominica.

³⁷ Reply at ¶ 28.

³⁸ See, e.g., 47 C.F.R. § 63.14 (prohibiting U.S. carriers from accepting special concessions from foreign carriers with market power) and 47 C.F.R. § 63.21(g) (allowing the Commission to impose additional requirements on U.S. international carriers where harm to competition is occurring on U.S. international routes).

³⁹ *1998 Section 214 Order*, 13 FCC Rcd at 17933-34, ¶ 1; *2002 Section 214 Public Notice*, 2002 WL 24115.

⁴⁰ See 47 C.F.R. § 63.10(c).

⁴¹ 47 C.F.R. § 63.14.

⁴² Complaint at 7, ¶ 12(e).

for which CWI is subject to dominant carrier regulation.⁴³ Section 63.14(b) defines “special concession” as “*an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of basic telecommunications services where the arrangement is not offered to similarly situated U.S.-licensed carriers and involves: (1) Operating agreements for the provision of basic services; (2) Distribution arrangements or interconnection arrangements . . . or (3) Any information, prior to public disclosure, about a foreign carrier’s basic network services that affects either the provision of basic or enhanced services or interconnection to the foreign country’s domestic network by U.S. carriers or their U.S. customers.*”⁴⁴

16. Marpin’s claim under section 63.14 rests entirely on its argument that defendants have violated the special concessions rule “*to the extent they benefit indirectly from CW-Dominica’s anticompetitive practices and do not disclose to U.S. carriers and customers the blocking of Marpin-related traffic.*”⁴⁵ This argument fails to allege the essential elements of a claim under section 63.14. Marpin has not identified any “arrangement” between CW USA and CW Dominica that has not been offered to similarly situated U.S.-licensed carriers. Marpin concedes that the alleged misconduct of which it complains under section 63.14 is the refusal of CW Dominica, a Dominican carrier, to interconnect Marpin, also a Dominican carrier, with U.S. carriers. Marpin contends that CW USA enjoys “indirect benefits” as a result of this alleged misconduct.⁴⁶ However, such unspecified indirect “benefits,” by themselves, do not qualify as “an exclusive arrangement” within the meaning of section 63.14.⁴⁷ Further, even if access to information about the blocking of Marpin-related traffic could, under some circumstances, qualify as a “special concession,” as Marpin’s argument implies, Marpin has not even alleged that CW USA had exclusive access to information about the blocking of Marpin-related traffic that was unavailable to similarly situated U.S. carriers. For these reasons, we must deny Marpin’s claim that CW USA has violated the conditions of its section 214 authorization by accepting a special concession prohibited under 47 C.F.R. § 63.14.⁴⁸

B. Marpin Has Failed to Establish that CW plc Violated Section 214.

17. Marpin alleges that CW plc has violated the terms and conditions of the section 214 authorization held by CW USA.⁴⁹ Marpin acknowledges that CW plc neither operates any communications facilities in the United States, nor holds any authorization to provide service pursuant to section 214 of the Act.⁵⁰ Marpin therefore does not contend that CW plc has violated the terms and conditions of any section 214 authorization issued to CW plc. Rather, Marpin’s allegations against CW

⁴³ 1998 Section 214 Order, 13 FCC Rcd at 17947, ¶ 37.

⁴⁴ 47 C.F.R. § 63.14(b) (emphasis added).

⁴⁵ Marpin Brief at 18 (emphasis added).

⁴⁶ *Id.*

⁴⁷ See 47 C.F.R. § 63.14(b); see also *supra* para. 15.

⁴⁸ In its brief, Marpin asserted for the first time that the conduct described in the Complaint also violated sections 201 and 202 of the Act. Marpin Brief at 18. The Complaint did not allege violations of section 201 or section 202, and Marpin devoted only one half page of its brief to these alleged violations. Marpin Brief at 18. As a result, the record provides an inadequate basis for us to assess the merits of Marpin’s section 201 and 202 claims. See, e.g., *AT&T Corp. v. Jefferson Telephone Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16130, 16133 n.18 (2001); *Consumer.Nat v. AT&T Corp.*, Order, 15 FCC Rcd 281, 300, ¶ 40 n.93 (1999) (declining to consider an argument raised for the first time in the briefs). Cf., *Building Owners and Managers Ass’n Int’l v. FCC*, 254 F.3d 89, 100 n.14 (D.C. Cir. 2001) (declining to address an issue raised cursorily in the brief).

⁴⁹ Complaint at 7, ¶ 13; at 8, ¶ 15; at 23-24, ¶ 56; at 24-25, ¶ 58; Reply at ¶ 23 (noting that “the entire focus of Marpin’s Complaint is the violation of the U.S. Defendants’ section 214 authorizations by all three Defendants”)

⁵⁰ Answer at ¶ II (A) (4); Marpin Brief at 4.

plc for violating section 214 are entirely derivative of its claims against CW USA. Thus, because Marpin has not established any violation of CW USA's section 214 authorization, Marpin's claims against CW plc cannot stand.⁵¹

IV. CONCLUSION

18. We conclude that Marpin has failed to allege facts sufficient to support its claims that CW USA and CW plc violated section 214 of the Act, or the terms and conditions of the order under which CW USA received authorization to operate pursuant to section 214. Consequently, we deny Marpin's claims against CW USA and CW plc in their entirety.⁵²

V. ORDERING CLAUSES

19. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 214, that the Complaint filed by Marpin Telecoms and Broadcasting Company Limited against Cable & Wireless, Inc., Cable & Wireless, USA, Inc., and Cable & Wireless, plc IS DENIED in its entirety, and this proceeding is TERMINATED WITH PREJUDICE.

20. IT IS FURTHER ORDERED, that the Motion for Summary Judgment or, in the Alternative, to Compel, filed on September 4, 2001, and the Joint Motion to Dismiss of Cable & Wireless USA, Inc. and Cable & Wireless plc, filed on September 6, 2001, ARE DENIED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵¹ We therefore find it unnecessary to reach the separate question of whether the Commission has personal jurisdiction over CW plc. We conclude that, even assuming jurisdiction exists, Marpin cannot establish that CW plc violated section 214 of the Act or CW USA's section 214 authorization.

⁵² Marpin moved for summary judgment against CWI and CW plc based on their failure to answer the Complaint or, in the alternative, to compel the defendants to answer fully the allegations in the Complaint. Motion for Summary Judgment or, in the Alternative, to Compel, File No. EB-01-MD-015 (filed Sept. 4, 2001). Since filing that motion, Marpin has conceded that "CWI no longer exists separate from CWUSA," Marpin Brief at 3, and has stated that it "sees no need for an exercise of separate jurisdiction over CWI" as long as CW USA "is held fully responsible for the actions of CWI and for the production of documents formerly in the possession of CWI," *id.* Consequently, we consider Marpin's request for summary judgment against CWI to be withdrawn. In any event, we deny the Motion for Summary Judgment as moot because, as discussed above, even assuming the facts alleged by Marpin are true, we find that Marpin cannot establish a violation of section 214 or CW USA's section 214 authorization by CW USA, its predecessor CWI, or its indirect parent CW plc. Moreover, because we deny the Complaint based on Marpin's failure to establish that any of the defendants violated section 214 or CW USA's section 214 authorization, we need not address the additional grounds for dismissal that CW USA and CW plc raised in the Joint Motion to Dismiss. In addition, we deny as moot Marpin's two letter requests for leave to supplement the exhibits to the Marpin Brief. Letter from Eric Fishman, counsel for Marpin, to Lisa J. Saks, Attorney, Market Dispute Resolution Division, Enforcement Bureau, File No. EB-01-MD-015 (filed Feb. 22, 2002); Letter from Eric Fishman, counsel for Marpin, to Lisa J. Saks, Attorney, Market Dispute Resolution Division, Enforcement Bureau, File No. EB-01-MD-015 (filed Mar. 7, 2002).